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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,450	07/25/2003	Jason M. Maycroff	MAYEROFF03-02	3434

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EXAMINER	
CROSS, ALAN	
ART UNIT	**PAPER NUMBER**
3714	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/627,450	MAYEROFF, JASON M.	
	Examiner	Art Unit	
	Alan Cross	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *13 November 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3-6,8 rejected under 35 U.S.C. 102(e) as being anticipated by Loewenstein (US Pub #2003/0107174).

Regarding claim 1: Loewenstein discloses an improved electronic gaming device of the type having a video display, a computer processor to control the device and display, a first data structure storing data representing each card of at least one deck of playing cards for the game and a wager acceptor, the improvement comprising: said processor configured to randomly select from said data structure and" display at least N five card hands, each arranged on a side of a polygon having N sides, adjacent hands sharing at least one card at the corner intersection thereof; a second data structure storing data corresponding to hand winning outcomes and awards; said processor configured to compare each hand N to said data structure and for each winning outcome issue a corresponding award (pg. 1, parg. 0003).

Regarding claim 3: Loewenstein discloses the improved device of claim 1 comprising N is greater than or equal to 3 (claim #10).

Regarding claim 4: Loewenstein discloses the improved device of claim 1 comprising said processor configured to compare each five card set of cards on said sides to said second data structure (pg. 1, 0003, and claim #10).

Regarding claim 5: Loewenstein discloses the improved device of claim 1 comprising said first data structure including data sets representing a full deck of cards for each side N and said processor randomly selecting for each hand cards from the corresponding side card data set (pg. 1, parg. 0019).

Regarding claim 6: Loewenstein discloses the improved device of claim 1 further comprising a player input device configured for the player to select none, one or more cards from any hand N, said selected card reproduced at each comer of the polygon, said processor configured to control the display to remove the other cards and to select and display replacement cards for the removed cards to define at least N final hands and to compare each hand N to said data structure and for each winning outcome issue a corresponding award (pg. 1, 0008).

Regarding claim 8: Loewenstein discloses a method for a player to play a video Poker game comprising: providing a game processor and a video display; the player making a wager to play N hands, where N is greater than or equal to 3 (claim #10), and prompting play; configuring the processor to select and display the N hands, each of at least five playing cards, at the display in a polygon pattern with N sides, each hand on displayed along a side and each hand sharing at least one card; and comparing the

combinations of cards for each hand to a predetermined schedule of winning holdings and if any hand is a winning holding issuing an award to the player (pg. 1, 0003). A processor and a video display are a essential part of a video poker game (fig. 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2,7,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loewenstein (US Pub #2003/0107174) in view of Rudolph (US Pub #2002/0145255)

Regarding claim 2: Loewenstein teaches the improved device of claim 1 where further comprising a player input device except to be configured for the player to select none, one or more cards of a hand N to discard and replace, said processor configured to select and display data representing a replacement card for each discarded card to

determine a final hand and compare each final hand N to said data structure and for each winning outcome issue a corresponding award. Rudolf teaches configured for the player to select none, one or more cards of a hand N to discard and replace, said processor configured to select and display data representing a replacement card for each discarded card to determine a final hand and compare each final hand N to said data structure and for each winning outcome issue a corresponding award (pg. 2, parg. 0016). It would have been obvious to one of ordinary skill in the art to modify Loewenstein with the selecting and discarding the cards of Rudolf. This would allow the user to play a number of card hands at the same time and be able to select cards to be replaced hoping for a better hand. It is well known in poker to select and discard cards in a hand to achieve a better hand.

Regarding claim 7: Loewenstein teaches the improved device of claim 6, and is fully capable of comprising the player selecting at least three cards.

Regarding claim 9: Loewenstein teaches the method of claim 8 comprising the player. Loewenstein lacks for at least one hand, selecting one or more cards to discard, the processor selecting and displaying replacement cards for each discarded card. Rudolph teaches for at least one hand, selecting one or more cards to discard, the processor selecting and displaying replacement cards for each discarded card (pg. 2, parg. 0016). It would have been obvious to one of ordinary skill in the art to modify Loewenstein to select and discard cards and then display new cards using the method of Rudolph. This would allow the user to play a number of card hands at the same time

and be able to select cards to be replaced hoping for a better hand. It is well known in poker to select and discard cards in a hand to achieve a better hand.

Response to Amendment

The affidavit filed on 11/13/06 under 37 CFR 1.131 has been considered but is ineffective to overcome the Loewenstien reference. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Loewenstien reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Evidence submitted does not disclose all of the claimed invention. Nowhere does it mention an electronic gaming machine with a processor that randomly selects cards from a first data structure or a second data structure storing data corresponding to hand winning outcome and awards. The claim structure is not shown in the evidence submitted.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Loewenstien reference to either a constructive reduction to practice or an actual reduction to practice. Evidence submitted to the examiner does not show diligence of the applicant or attorney, large gaps of time between statements are not accounted for and show that the invention was not work upon to bring to practice. More than a year passed from alleged conception to actually filling. The examiner points to MPEP 715.07, 2138.04, 2135.05, and 2138.06. For these

reasons the examiner respectfully disagrees with the applicant as to the claims condition for allowance

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cross whose telephone number is 571-272-5529. The examiner can normally be reached on 8-4 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ARC 571-272-5529

2/12/07

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